

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DONALD E. MORISKY,

Plaintiff,

v.

MMAS RESEARCH, LLC, et al.,

Defendants.

Case No. C21-1301-RSM

**ORDER STRIKING DEFENDANTS'  
MOTION TO SEAL AND MOTION  
IN LIMINE FOR FAILURE TO  
COMPLY WITH RELEVANT LOCAL  
CIVIL RULES**

**I. INTRODUCTION**

This matter comes before the Court on Defendants' Motion to File Document Under Seal (Dkt. #160) and Defendants' Motion in Limine (Dkt. #161). Having reviewed the record and the governing law, the Court STRIKES the Motions for failure to comply with the relevant Local Civil Rules.

**I. BACKGROUND**

In brief, this is an action brought by Plaintiff Donald E. Morisky, professor emeritus at the University of California, Los Angeles Fielding School of Public Health, for copyright and trademark infringement and unfair competition under federal statutes, with pendent claims for common law trademark infringement, state deceptive trade practices, breach of contract, and breach of the implied covenant of good faith and fair dealing.

1 On December 4, 2020, Plaintiff and Defendants entered into a Settlement Agreement in  
2 connection with a civil suit then pending in the State of Washington in which Defendants  
3 purportedly acknowledged Dr. Morisky was the sole and exclusive holder of the Morisky  
4 intellectual property and agreed to assign any copyrights, trademarks and related Morisky  
5 intellectual property Defendants had to Dr. Morisky. Dkt. #21 at 2–3. Further, Defendants  
6 purportedly covenanted not to further engage in the business of using or licensing the Morisky  
7 Widget or any Morisky intellectual property to any prospective licensee. *Id.* at 3.

9 On September 24, 2021, Dr. Morisky initiated this action alleging Defendants breached  
10 the Settlement Agreement and infringed his federal intellectual property rights by, among other  
11 things, continuing to use Dr. Morisky’s intellectual property without authorization. *Id.*

13 Since then, the parties have engaged in significant motions practice before Magistrate  
14 Judge David W. Christel. During this time, Judge Christel has repeatedly admonished  
15 Defendants for failing to abide by the Local Civil Rules (“LCRs”). On June 5, 2023, Judge  
16 Christel issued a Minute Order striking Defendants’ Motion for Preliminary Injunction and  
17 Defendants’ Motion for Extension of Time to Complete Discovery for failure to comply with the  
18 LCRs warning that “[i]f a filing does not comply with the LCRs, the Court may strike the filing  
19 without further consideration.” Dkt. #137. Then, on July 6, 2023, Judge Christel issued an Order  
20 striking Defendants’ Motion in Limine and the Declaration of Steven Tubrow for failure to  
21 comply with the LCRs adding:  
22

24 The Court also notes Defendants have continued to file documents that allegedly contain  
25 attorney-client communications. *See* Dkt. 146. The parties are directed to refrain from  
26 filing documents that contain attorney-client communications. If such filing is necessary,  
27 the party must file the document containing such communications under seal until the  
28 District Judge assigned to this case has an opportunity rule on the admissibility of such  
communications. The Clerk is directed to place Docket Entry 146 under seal.

Dkt. #151.

1 On July 19, 2023, Defendants subsequently filed the instant Motion to Seal (Dkt. #160)  
2 and Motion in Limine (Dkt. #161). Defendants state that they filed the Motion to Seal in  
3 response to Judge Christel's July 6, 2023, Order (Dkt. #151) because, in their Motion in Limine  
4 (Dkt. #161), Defendants seek an order from the Court allowing introduction of evidence and  
5 testimony they anticipate Plaintiff will claim is privileged—as such the Motion in Limine  
6 includes potentially privileged communications. Plaintiff opposes both Motions. Dkt. #171.

## 8 II. ANALYSIS

### 9 A. Motion to Seal

10 There is a strong presumption of public access to judicial records. *Kamakana v. City &*  
11 *Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). A party seeking to seal records related  
12 to motions that are dispositive or otherwise “more than tangentially related to the merits of a  
13 case,” must “meet the high threshold of showing that ‘compelling reasons’ support secrecy.”  
14 *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1098–99, 1102 (9th Cir. 2016);  
15 *Kamakana*, 447 F.3d at 1180 (internal citation omitted). “[P]lenty of technically nondispositive  
16 motions—including routine motions in limine—are strongly correlative to the merits of a case.”  
17 *Ctr. for Auto Safety*, 809 F.3d at 1099.

18 In the Western District of Washington, parties moving to seal documents must comply  
19 with the procedures established by Civil Local Rule 5(g). Pursuant to LCR 5(g)(3)(A), a  
20 motion to seal a document, even if it is a stipulated motion, must include “a certification that  
21 the party has met and conferred with all other parties in an attempt to reach agreement on the  
22 need to file the document under seal, to minimize the amount of material filed under seal, and  
23 to explore redaction and other alternatives to filing under seal; this certification must list the  
24 date, manner, and participants of the conference.”  
25  
26  
27  
28

1 Further, pursuant to LCR 5(g)(3)(B), the party who designates a document confidential  
2 must provide a “specific statement of the applicable legal standard and the reasons for keeping  
3 a document under seal, including an explanation of: (i) the legitimate private or public interest  
4 that warrant the relief sought; (ii) the injury that will result if the relief sought is not granted;  
5 and (iii) why a less restrictive alternative to the relief sought is not sufficient.”  
6

7 Plaintiff states that no such conference was attempted. Dkt. #171 at 2. Instead, Plaintiff  
8 argues Defendants improperly filed their entire Motion and all exhibits—even those for which  
9 no assertion of privilege has been made—under seal. *Id.*

10 Judge Christel’s instruction to file documents containing potentially privileged  
11 communications under seal does not relieve Defendants of its obligations to follow the LCRs.  
12 This is now the third time in this case Defendants are being reminded of their obligations to  
13 comply with the LCRs. The LCRs, especially provisions requiring the parties to meet and  
14 confer, are crucially important to the efficient functioning of the Court. Meet and confer  
15 requirements put the onus on the moving party to work together to narrow the issues before the  
16 court and allow for the expedient resolution of pre-trial issues. If this case is to continue to trial  
17 the parties are warned that the Court takes compliance with the LCRs seriously and instructs  
18 the parties to review and abide by the LCRs. Due to Defendants’ failure to comply with LCR  
19 5(g)(3)(A) the Court STRIKES Defendants’ Motion to Seal. Dkt. #160.  
20  
21

## 22 **B. Motion in Limine**

23 Pursuant to LCR 7(d)(4):  
24

25 Any motion in limine must include a certification that the movant has in good faith  
26 conferred or attempted to confer with other affected parties in an effort to resolve which  
27 matters really are in dispute. A good faith effort to confer requires a face-to-face  
28 meeting or a telephone conference. If the court finds that counsel for any party, or a  
party proceeding pro se, willfully refuses to confer, fails to confer in good faith, or fails

1 to respond on a timely basis to a request to confer, the court may take action as stated in  
2 LCR 11 of these rules.

3 Defendants' Motion in Limine lacks the required certification. *See generally* Dkt. #161.

4 In fact, according to Plaintiff, Defendants "did not even attempt to confer on the issues raised,  
5 either before Defendants' submission of this Motion, or before their submission of the  
6 [previously filed iteration of the Motion in Limine], which the [Judge Christel] struck *sua*  
7 *sponte* for failure to comply with the Local Rules." Dkt. #171 at 2 (emphasis removed).  
8 Plaintiff also points out that Defendants' Motion in Limine fails to include a certification of  
9 word count and is overlength without leave of court. *Id.* at 3.  
10

11 Again, this Court has meet and confer requirements for a reason. These requirements  
12 are designed to require the parties to meaningfully meet and confer before bringing issues  
13 before this Court so the Court's and the parties' time and resources are used efficiently. The  
14 Court expects the parties to review and abide by the Local Civil Rules and warns that future  
15 violations may result in sanctions. *See* LCR 11(c). For failure to comply with LCR 7(d)(4), the  
16 Court STRIKES Defendants' Motion in Limine. Dkt. #161.  
17

### 18 III. CONCLUSION

19 For the above reasons, the Court STRIKES Defendants' Motion to Seal (Dkt. #160) and  
20 Motion in Limine (Dkt. #161) WITHOUT PREJUDICE. Defendants have leave to re-file their  
21 motions in accordance with this Order **within seven (7) days**.  
22

23  
24 DATED this 25<sup>th</sup> day of September, 2023.  
25

26 

27 RICARDO S. MARTINEZ  
28 UNITED STATES DISTRICT JUDGE